

09/889098

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Attorney Docket No. 072330/0102

In re patent application of

Gunther SCHERER

Group Art Unit: Unassigned

Serial No. 09/889,098

Examiner: Unassigned

Filed: October 22, 2001

Title: **METHOD FOR INDUCING OR PROMOTING AN ANTHOCYANIN
COLORATION IN PLANTS AND/OR FRUIT WHICH BASICALLY PRODUCE
ANTHOCYANIN**

REPLY TO NOTIFICATION OF DEFECTIVE RESPONSE

Commissioner for Patents
Washington, D.C. 20231
BOX PCT DO/EO

Sir:

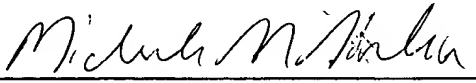
This paper is filed in response to the Notification of Defective Response, originally mailed on November 16, 2001, and faxed to Applicant's representative on January 3, 2003. The Decision on Applicant's Petition for Restarting Time Period for Replying to Defective Response under 37 C.F.R. § 1.181(a) or alternatively, Petition to Withdraw Holding of Abandonment Under 37 C.F.R. § 1.181(a), stated that a response to the Notification of Defective Response was due by **April 14, 2003**. Accordingly, this paper is timely filed.

The Notification of Defective Response indicates that the current translation of the application into English is defective in that the text of the drawings has not been properly translated. Applicants submit herewith a translation of Figures 1-3 from PCT/DE00/00068. Attached to the translation is a certification from the translator that the translation is a true and accurate translation of the original text of the drawings.

The submission of the translated figures satisfies the requirements for acceptance of the application under 35 U.S.C. § 371. Accordingly, it is requested that the application proceed in National Stage and be forwarded to the appropriate examining group.

Respectfully submitted,

April 8, 2003
FOLEY & LARDNER
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Washington, D.C. 20007-5109
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Michele M. Simkin
Reg. No. 34,717

Should additional fees be necessary in connection with the filing of this paper, or if a petition for extension of time required for timely acceptance of same, the Commissioner is hereby authorized to charge Deposit Account No. 19-0741 for any such fees; and applicant(s) hereby petition for any needed extension of time.

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Helping businesses communicate worldwide™

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TRANSLATION CERTIFICATION

This is to certify that the translation of the attached document, **Ref.: 72330/0102**, was performed by a professional translator and is to the best of our knowledge and ability, a true and accurate translation of the original text delivered to Language Innovations, LLC by our client, **Foley & Lardner**. The original document was translated from **German** into **English** and at completion delivered to the client on **April 4, 2003**.

I hereby declare that all statements made herein are of my own knowledge and are true and that all statements made based on information or belief are believed to be true.

Language Innovations, LLC hereby agrees to keep the content of this translation confidential according to ethical and legal standards of the profession of Translation. Language Innovations, LLC agrees not to discuss, evaluate, distribute or reproduce any material included in or related to the translation of this document.

Date: April 4, 2003

Signature: *Mariela Diaz-Butler*
Mariela Díaz-Butler, Manager
Language Innovations, LLC



14 MAR 2003

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
www.uspto.gov

Foley & Lardner
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COPY

In re Application of SCHERER	:	
U.S. Application No.: 09/889,098	:	
Int. Application No.: PCT/DE00/00068	:	DECISION
Int. Filing Date: 11 January 2000	:	
Priority Date: 11 January 1999	:	
Attorney Docket No.: 072330-0102	:	
For: METHOD FOR INDUCING OR PROMOTING	:	
AN ANTHOCYANIN COLORATION IN	:	
PLANTS AND/OR FRUIT WHICH	:	
BASICALLY PRODUCE ANTHOCYANIN	:	

This is in response to applicant's "Petition for Restarting Time Period for Replying to Defective Response Under 37 C.F.R. § 1.181(a) or, alternatively, Petition to Withdraw Holding of Abandonment Under 37 C.F.R. § 1.181(a)" filed 16 January 2003.

BACKGROUND

On 11 January 2000, applicant filed international application PCT/DE00/00068, which claimed priority of an earlier Germany application filed 11 January 1999. A copy of the international application was communicated to the USPTO from the International Bureau on 20 July 2000. A Demand for international preliminary examination, in which the United States was elected, was filed on 29 July 2000, prior to the expiration of nineteen months from the priority date. Accordingly, the thirty-month period for paying the basic national fee in the United States expired at midnight on 11 July 2001.

On 11 July 2001, applicant filed national stage papers in the United States Designated/Elected Office (DO/EO/US). The submission was accompanied by, *inter alia*, the basic national fee required by 35 U.S.C. 371(c)(1).

On 22 August 2001, the DO/EO/US mailed a Notification of Missing Requirements Under 35 U.S.C. 371 (Form PCT/DO/EO/905), which indicated that an oath or declaration in compliance with 37 CFR 1.497 and an English translation of the international application must be filed.

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On 22 October 2001, applicant filed an executed declaration and a purported translation of the international application.

On 16 November 2001, the DO/EO/US mailed a Notification of Defective Response (Form PCT/DO/EO/905), which indicated that the purported translation filed 22 October 2001 was improper because it did not include a translation of certain text within the drawings.

On 03 January 2003, the DO/EO/US sent a copy of the Notification of Defective Response to applicant via facsimile.

On 16 January 2003, applicant filed the present petition under 37 CFR 1.181. The petition states that the Notification of Defective Response mailed 16 November 2001 was never received.

DISCUSSION

Pursuant to MPEP 711.03(c), the showing required to establish nonreceipt of an Office communication must include: (1) a statement by the practitioner that the Office communication was not received by the practitioner, (2) a statement by the practitioner that he searched the application file jacket and docket records and that the search indicates that the Office communication was not received, and (3) a copy of the docket record where the non-received Office communication would have been entered had it been received and docketed.

With regard to item (1) above, applicant's representative has provided the required statement.

With regard to item (2) above, applicant's representative has provided the required statement.

With regard to item (3) above, applicant's representative has submitted a docket record which lists responses due to the USPTO on the appropriate dates for all cases handled by applicant's representative. This docket record illustrates the absence of any listing of a response due to a Notification of Defective Response.

CONCLUSION

For the reasons above, the petition under 37 CFR 1.181 is GRANTED.

As set forth in MPEP 724.05, in order to have certain information contained within the petition under 37 CFR 1.181 expunged, a petition under 37 CFR 1.59(b) must be filed along with the appropriate petition fee. Applicant is advised that a decision on such a petition will be held

in abeyance until the application is allowed or an *Ex parte Quayle* action or a Notice of Abandonment is mailed. See MPEP 724.06.

A proper reply to the Notification of Defective Response must be filed within ONE (1) MONTH from the mail date of this decision. Failure to timely file a proper response will result in ABANDONMENT of the application. Extensions of time are NOT available under 37 CFR 1.136(a).

This application is being forwarded to the United States Designated/Elected Office (DO/EO/US) to await applicant's reply to the Notification of Defective Response.



Bryan Tung
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PCT Legal Office

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UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
Washington, D.C. 20231
www.uspto.gov

U.S. APPLICATION NUMBER NO.	FIRST NAMED APPLICANT	ATTY. DOCKET NO.
09/889,098	Guenther Scherer	072330-0102
INTERNATIONAL APPLICATION NO.		
PCT/DE00/00068		
I.A. FILING DATE		PRIORITY DATE
01/11/2000		01/11/1999

Bernhard D Saxe
Foley & Lardner
Washington Harbour
3000 K Street, N.W., Suite 500
Washington, DC 20007-5109

CONFIRMATION NO. 7932

371 FORMALITIES LETTER



OC00000007071086

Date Mailed: 11/16/2001

NOTIFICATION OF DEFECTIVE RESPONSE

The following items have been submitted by the applicant or the IB to the United States Patent and Trademark Office as an Elected Office (37 CFR 1.495):

- U.S. Basic National Fee
- Priority Document
- Copy of IPE Report
- Copy of references cited in ISR
- Copy of the International Application
- Copy of the International Search Report
- Oath or Declaration
- Preliminary Amendments

The following items **MUST** be furnished within the period set forth below in order to complete the requirements for acceptance under 35 U.S.C. 371:

- Translation of the application into English. The current translation of the application into English is defective as described below.
 - The text in the drawings has not been properly translated.

Applicant is required to complete the response within a time limit of **ONE MONTH** from the date of this Notification or within the time remaining in the response set forth in the Notification of Missing Requirements, whichever is the longer. No extension of this time limit may be granted under 37 CFR 1.136, but the period for response set in the Notification of Missing Requirements may be extended up to a maximum of six months.

Applicant is reminded that any communications to the United States Patent and Trademark Office must be mailed to the address given in the heading and include the U.S. application no. shown above (37 CFR 1.5)

*A copy of this notice **MUST** be returned with the response.*

WINSTON M ALVARADO

Telephone: (703) 305-6421

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PART 2 - OFFICE COPY

U.S. APPLICATION NUMBER NO.	INTERNATIONAL APPLICATION NO.	ATTY. DOCKET NO.
09/889,098	PCT/DE00/00068	072330-0102

01/03/03
COPY
001/003



PCT OPERATIONS

FACSIMILE TRANSMISSION COVER SHEET

DATE: 01-03-03TO: Michèle M. Simkin.TELEPHONE: _____
FAX NO.: 202-672-5399.FROM: Winston Alvarado.TELEPHONE: 703-305-6421
FAX NO.: 703-308-4785 OR 703-305-3230MESSAGE: Attached is a copy of the notification
of defective response mailed on 16 November, 2001.NUMBER OF PAGES 3 (INCLUDING THIS PAGE)